

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

UNITED STATES OF AMERICA,)
)
Plaintiff,) Case No.: 3:13-cr-00053-HDM-WGC
)
vs.) MINUTES OF COURT
LESTER ROGER DECKER,)
)
Defendant.) December 19, 2013
 /

PROCEEDINGS: JURY TRIAL - DAY FOUR

PRESENT:

THE HONORABLE HOWARD D. McKIBBEN, SENIOR U.S. DISTRICT JUDGE

Deputy Clerk: Paris Rich and Heidi Jordan Reporter: Kathryn French

Counsel for Plaintiff: Daniel Schiess, AUSA and Michael Large, AUSA

Counsel for Defendant: John Neil Stephenson, Esq. and Karena Dunn, Esq.

At 8:00 a.m., the Court confers off the record with counsel to address the proposed jury instructions and verdict form(s).

The Defendant (In Custody and dressed in street attire) is present with counsel.

The Government is present with David Elkington, Special Agent, Federal Bureau of Investigation.

At 8:16 a.m., the parties are excused until 10:30 a.m. this date.

At 10:25 a.m., outside the presence of the jury, the Court convenes with all parties present.

Mr. Schiess reports an incident this date on the street outside of the AUSA office and statements which may have been inadvertently overheard by a juror. Mr. Schiess does not know the juror's name, however, he believes he can identify her. The Court directs that Mr. Schiess shall identify the juror to the Court via a note to the Courtroom Clerk, and the juror will thereafter be canvassed by the Court following witness testimony.

At 10:27 a.m., the jury enters the courtroom.

STEPHEN BUFFO, called on behalf of the Defendant, is sworn, examined on direct by Mr. Stephenson, and released subject to recall.

IT IS ORDERED, the Defendant's Exhibit 100 and 101 are received into evidence.

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At 11:03 a.m., the jury is admonished and excused for a brief recess.

At 11:04 a.m., outside the presence of the jury, after being identified by Mr. Schiess, Juror 9 enters the courtroom and is canvassed by the Court regarding any possible inadvertent contact with counsel. Juror 9 confirms she did not overhear any statements by counsel. Juror 9 is released to the jury room.

At 11:14 a.m., the Court reconvenes in the presence of the jury with all parties present.

STEPHEN BUFFO, resumes the witness stand, is cross-examined by Mr. Schiess, and released subject to recall.

IT IS ORDERED, the Government's Exhibit 39 is received into evidence.

11:57 a.m., the jury is admonished and excused until 12:45 p.m. this date.

Outside the presence of the jury, the Court and counsel discuss and number the proposed jury instructions.

At 11:59 a.m., the Court stands at recess.

At 12:44 p.m., the Court reconvenes outside the presence of the jury.

Mr. Schiess recites the parties' stipulation regarding revision of the Government's Exhibit 39.
IT IS ORDERED, Pages 7, 8, 9, and 10 are removed from the existing Government's Exhibit 39 and replaced with the parties' stipulated copies. IT IS FURTHER ORDERED, Pages 18, 19 and 20 are inserted into the Government's Exhibit 39.

STEPHEN BUFFO, resumes the witness stand, is further cross-examined by Mr. Schiess, examined on redirect by Mr. Stephenson, examined on re-cross by Mr. Schiess, further examined on redirect by Mr. Stephenson, and excused.

The Defendant rests.

The Government confirms there will be no rebuttal.

At 1:00 p.m., the Court recites the remaining schedule to the jury. The jury is admonished and excused.

Outside the presence of the jury, Mr. Stephenson presents argument on [104] Defendant's Motion for a Judgment of Acquittal on Attempted Aggravated Sexual Abuse. Mr. Schiess presents argument. The Court recites findings. **IT IS ORDERED, [104] Motion is DENIED.**

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The Court addresses the marked jury instructions. The Court further addresses the Government's [103] Proposed Jury Instruction. **IT IS ORDERED, the Government's [103] Proposed Jury Instruction is DENIED without prejudice.**

The Court addresses the Defendant's Proposed Jury Instruction No. 4. The Court recites findings. **IT IS ORDERED, the Defendant's Proposed Jury Instruction No. 4 is rejected by the Court and marked as the Defendant's Proposed Jury Instruction No. 1.**

The Court addresses the Defendant's Proposed Jury Instruction No. 1. The Court recites findings. **IT IS ORDERED, the Defendant's Proposed Jury Instruction No. 1 is rejected by the Court and marked as the Defendant's Proposed Jury Instruction No. 2.**

Mr. Schiess addresses the Defendant's opposition to the Government's [103] Proposed Jury Instruction and requests canvass regarding the opposition in the event of any potential appeal. Mr. Stephenson confirms the Defendant's opposition to [103] Proposed Jury Instruction.

The Court and counsel confer regarding the proposed two separate verdict forms. The Court and counsel further confer regarding the issues of aggravated and attempted aggravated sexual abuse.

At 1:29 p.m., the Court stands at recess.

At 1:34 p.m. the Court convenes outside the presence of the jury.

The Court recites statements. **IT IS ORDERED, the Court's ruling as to [104] Motion is reconsidered and GRANTED.** Mr. Schiess presents statements and recites case law summary. The Court and counsel confer. **IT IS ORDERED, the Court's initial ruling as to [104] Motion is reaffirmed and [104] Motion is DENIED, predicated on the Government's representation this date as recited into the record.** Mr. Stephenson recites final statements into the record.

The parties present no additional objection to the proposed jury instructions as marked by the Court or verdict forms.

At 1:45 p.m., the jury enters the courtroom.

The Court instructs the jury. The parties stipulate to the reference in the jury instructions of B.O. as Blanche Oppenheim.

Mr. Large presents closing argument on behalf of the Government.

Ms. Dunn presents closing argument on behalf of the Defendant.

At 3:20 p.m., the jury is admonished and excused. The Court stands at recess.

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At 3:34 p.m., the Court reconvenes with all parties and the jury present.

Mr. Schiess presents rebuttal argument on behalf of the Government.

The Court advises the jury as to the deliberation process.

Court Security Officers Richard Ingram and John McCauley are sworn to take charge of the jury.

The Court thanks and excuses the two alternate jurors and requests they remain briefly in the courtroom.

The Court recites further statements as to the deliberation process.

At 4:10 p.m., the jury is excused for deliberations.

Outside the presence of the jury, the Court further addresses the alternate jurors.

At 4:10 p.m., the Court stands at recess subject to call of the jury.

At 4:59 p.m., the Court reconvenes outside the presence of the jury. The parties stipulate to the return of the parties' non-admitted exhibits in this matter. **IT IS SO ORDERED.**

At 5:01 p.m., the jury enters the courtroom. Counsel stipulate all the jury is present.

The Court inquires as to whether the jury will continue deliberations this evening or return on Friday, December 20th. The foreperson states the jury requests to continue deliberations this date.

At 5:03 p.m., the jury is excused for further deliberations.

Outside the presence of the jury, counsel is advised to remain within five minutes of the courtroom. The Court stands at recess subject to call of the jury.

At 6:44 p.m., outside the presence of the jury, the Court reconvenes with the parties present. The Court states a note has been received indicating the jury has reached a verdict.

At 6:46 p.m., the jury enters the courtroom. Counsel stipulate all the jury is present.

The jury foreperson indicates the jury has reached a verdict. The verdict is published by the Courtroom Clerk.

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The jury finds the Defendant, Lester Roger Decker, NOT GUILTY of the offense of aggravated sexual abuse as charged in Count One of the Indictment.

The jury further finds the Defendant, Lester Roger Decker, GUILTY of the offense of attempted aggravated sexual abuse as charged in Count One of the Indictment.

The Court finds the verdicts are unanimous. The Defense does not request the jury be polled.

IT IS ORDERED, the matter is referred to the U.S. Department of Probation for preparation of a Presentence Investigation Report.

IT IS FURTHER ORDERED, the Sentencing is set for Wednesday, March 19, 2014 at 10:00 a.m. in Reno Courtroom 4 before Judge Howard D. McKibben.

The Court recites comments, thanks and releases the jury. The jury exits the courtroom.

The Court recites closing comments to counsel.

The Defendant is remanded to custody.

At 6:53 p.m., the Court adjourns.

LANCE S. WILSON, CLERK

By: /s/ Paris Rich
Deputy Clerk